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IN THE  
**United States**  
**Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

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MASON B. PATTEN,

*Appellant,*

vs.

J. CHARLES DENNIS, United States  
Attorney in and for the Western  
District of Washington,

*Appellee.*

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UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION

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HONORABLE JOHN C. BOWEN, *Judge*

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**BRIEF OF APPELLEE**

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J. CHARLES DENNIS  
*United States Attorney*

G. D. HILE  
*Assistant United States Attorney*  
*Attorneys for Appellee*

OFFICE AND POST OFFICE ADDRESS:  
1017 UNITED STATES COURT HOUSE.  
SEATTLE, WASHINGTON

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**BRIEF OF APPELLEE**

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STATEMENT OF THE CASE

Mason B. Patten was a classified laborer at the Puget Sound Navy Yard. He was discharged for inefficiency. Claiming that his discharge was due to

discrimination, he complained to the United States Attorney. The latter wrote him that it was necessary that he contact the Navy Yard (Tr. 11). He did so, and a finding was made by the Navy Yard that his discharge for inefficiency was amply justified and that his charge of discrimination was unfounded.

After receiving this letter, he filed the present petition, which he denominated as a Petition to Show Cause. As near as appellee can determine, the gist of the Petition is that Bogard, Larsen and Smith made a statement in writing to the Chief of Yard, Puget Sound Navy Yard, relative to Patten. That the statements in the letter were false. That because of the same, appellant suffered irreparable damage. His prayer is that appellee (United States District Attorney) appear before the Court and show cause why a warrant should not issue against Smith, Bogard and Larsen.

Appellee filed a motion to dismiss. The motion was granted, and judgment of dismissal entered. The case is here on appeal.

## POINTS RELIED UPON

The Points relied upon were three (Tr. 31):



1. That defendant failed to respond to pleadings in accordance with Federal rules of procedure.

2. That the District Court had jurisdiction of the subject matter.

3. That appellant did state a claim upon which relief can be granted, and particularly insofar as the defendant is concerned.

## I. PLEADING

Appellee, in response to petition, filed a motion to dismiss. This is proper pleading [Rule 7(b)].

## II. COURT HAD NO JURISDICTION

If the action is for pecuniary damages, no diversity of citizenship is alleged, nor the jurisdictional amount.

If against the United States, no statute allows petitioner the right to sue.

## III. PETITION DID NOT STATE A CAUSE OF ACTION

All that the petition stated was that Smith approached Bogard and Larsen and solicited help in preventing Patten from carrying through a request for investigation of malicious practice against Patten. That these three men made a statement in writing

to the Chief of Yard, Puget Sound Navy Yard, which statement was false.

The petition is silent as to when the statement in writing was made, or what it contained. If false, as alleged, appellant has a civil remedy against the three men, but not in the Federal Court. These men were not parties to the action.

If a federal offense was involved, appellant had the right to appear before the grand jury, a right which was tendered him (Tr. 16).

## MOTION

Appellant has filed a motion in this Court to allow him to verify his petition, and have the same treated as a "Quo Warranto" proceeding.

As stated before, if any criminal violation has been committed by Larsen, Smith or Bogard, the body that has the duty of preferring the charges is the grand jury. Appellant does not allege that he has been prevented from appearing before the grand jury. He couldn't. He was given that privilege, appeared and testified. The grand jury disposed of his grievance in the same way as the Naval authorities, refusing to bring in a true bill.

## CONCLUSION

The action being entirely without merit, the ruling of the District Court was correct, and the judgment of dismissal should be affirmed.

Respectfully submitted,

J. CHARLES DENNIS  
*United States Attorney*

G. D. HILE  
*Assistant United States Attorney*  
*Attorneys for Appellee*

